ANDREW H. L. ANDERSON ET AL.

IBLA 77-154 Decided September 12, 1977

Appeal by grazing lessees of a decision of the Riverside District Office, Bureau of Land Management, requiring that grazing livestock be marked with ear tags.

Affirmed.

1. Grazing Leases: Generally--Rules of Practice: Appeals: Generally

Implementation of the Taylor Grazing Act of 1934 is committed to the discretion of the Secretary of the Interior. A decision made in the exercise of that discretion must contain such a statement of reasons in support of the decision as will establish that the discretion has been exercised in a manner that is neither arbitrary nor capricious. Review on the issue of abuse of discretion is limited to an inquiry whether the statement of reasons establishes a rational and defensible basis for the decision below.

APPEARANCES: Stanford C. Shaw, Esq., Newberry Springs, California, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought by Andrew H. L. Anderson and other holders of grazing leases 1/ within the Cima Resource Area of California from

1/ The following parties to this appeal are the holders of grazing leases within the Cima Resource Area:

Lessee	Lease Number
Andrew H. L. Anderson	0406726
Howard P. Blair	0406712

a December 6, 1976, decision of the Riverside District Office, Bureau of Land Management (BLM), requiring that all livestock authorized to graze, other than range bulls, be marked with eartags furnished by the BLM. All of the leases were issued pursuant to Section 15 of the Taylor Grazing Act of June 28, 1934, as amended, 43 U.S.C. § 315m (1970), governing leases for grazing lands located outside of any grazing district.

The essential contention of appellants in their statement of reasons for appeal is that the decision requiring eartagging is an abuse of discretion. It is alleged that eartagging is unnecessary to range control, and is costly, inefficient, and damaging to the health of the herd. Appellants argue that branding and earmarking are acceptable alternatives for the purpose of range administration. The further allegation is made that eartagging is not authorized by the Taylor Grazing Act of June 28, 1934, as amended, 43 U.S.C. § 315 et seq. (1970). Counsel for appellants has requested an evidentiary hearing before an administrative law judge and an opportunity to present oral argument before the Board.

The decision below requiring eartagging of grazing cattle was based on the regulations, 43 CFR 4122.3 and 43 CFR 4112.3-2(a)(4), 2/ giving the District Manager discretionary authority to require eartagging to abate trespass and promote orderly administration of the range. The decision recited the following reasons for the action taken:

> 1) The size, terrain and vegetative cover of the area makes [sic] it extremely difficult for us to check for authorized numbers of cattle. Tagging will allow us to make a quick

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fn. 1 (continued)

Ebbie H. Davis and D. L. Dawson	CA 067622
Charles A. Mitchell, Sr., and Charles A. Mitchell, Jr.	0406723
Gary Overson	0406094 and CA 067617
OX Cattle Co.	04060072
Fleet and Jane Southcott	CA 067615
Arthur and Louella Parker	CA 067625

The caption of the Notice of Appeal and the statement of reasons filed in this case identifies the Pacific Legal Foundation as an additional party. The record fails to disclose in what way the latter party was adversely affected by the decision below. This is the prerequisite required to establish standing to appeal, 43 CFR 4.410, and, in the absence thereof, we cannot regard Pacific Legal Foundation as a proper party to the appeal.

2/ All of appellants' grazing leases were expressly made subject to the regulations of the Secretary of the Interior.

and accurate check on authorized numbers of cattle throughout the grazing season.

2) It is essential that we facilitate close control over livestock numbers in order to evaluate range condition and trend under present grazing. Any unauthorized use could change the trend of the range downward which would result in deterioration of range condition.

3) Detect and deter all unauthorized use in the area as rapidly as possible.

The background of this case discloses that the Cima Resource area grazing lessees who brought this appeal were also parties to a decision of the Acting Assistant Secretary of the Interior dated March 4, 1976, which noted that adverse moisture conditions commencing in 1974 had resulted in low forage production and poor range condition. The decision further noted that the combination of adverse climatic conditions and grazing during the intervening period had severely reduced available forage. For these reasons, this prior decision reduced the authorized grazing use on appellants' leases by 75 percent and required that eartags be affixed to animals authorized to graze after May 15, 1976. The decision, by its own terms, was effective from March 15, 1976, to February 28, 1977.

Subsequently, by decision of May 18, 1976, the Deputy Assistant Secretary of the Interior extended the deadline for reduction in numbers of grazing cattle and for eartagging to June 30, 1976. This was superseded by a decision of the Assistant Secretary of the Interior dated July 9, 1976, which modified the authorized grazing levels in accordance with the latest weather conditions and forage growth rate and extended the deadline for eartagging to November 30, 1976. This latter decision expressly provided that it would be in effect for the period from July 1, 1976, to February 28, 1977.

The lessees subsequently filed suit against the Secretary of the Interior in the United States District Court, seeking to enjoin him from enforcing the decision regarding grazing use reduction and eartagging. The Court denied the requested injunction and dismissed the suit. Anderson v. Kleppe, No. CV 76-2099-DWW (C.D. Cal. August 25, 1976), appeal docketed, No. 76-3240 (9th Cir. September 14, 1976). The Court, in its findings of fact and conclusions of law, held, among other things, that the decision of the Secretary clearly falls within the broad discretionary power granted by the Taylor Grazing Act of 1934, and that the record did not support plaintiffs' allegation that the decision of the Secretary constituted an abuse of discretion. The Court did not find that a hearing was necessitated either by regulation or by due process requirements.

The decision of the BLM issued on December 6, 1976, requiring that all livestock authorized to graze in the Cima Resource Area, other than range bulls, be marked with eartags after February 28, 1977, is merely an extension of a policy enunciated by the Secretariat of the Department in March of 1976.

The issue raised by this appeal is whether the decision requiring the affixing of eartags to cattle authorized to graze under grazing leases constitutes an abuse of discretion. The issue was discussed in the litigation which followed pronouncement of the Secretary's policy in 1976. We adhere to the finding that it is not an abuse of discretion.

The Taylor Grazing Act of June 28, 1934, as amended, 43 U.S.C. § 315 et seq. (1970), 3/ is a legislative effort to provide the most beneficial use of the public range. Hatahley v. United States, 351 U.S. 173, 177 (1956). Section 2 of the Act directs the Secretary of the Interior to "make such rules and regulations * * * and do any and all things necessary to accomplish the purposes of this [Act]." 43 U.S.C. § 315(a) (1970).

Among the regulations adopted to implement the Taylor Grazing Act is the one which authorizes eartagging:

> (4) The District Manager shall retain the discretionary authority to require eartagging and other marking of livestock in order to abate trespass and promote the orderly administration of the range.

43 CFR 4112.3-2(a)(4). This regulation is made applicable to grazing leases issued for lands outside a grazing district by the terms of 43 CFR 4122.3. Thus, the authority for requiring eartagging of grazing livestock is clear.

[1] Where the implementation of a statute is committed to the discretion of an administrative agency, a decision made in the exercise of that discretion must contain a statement of reasons supporting the decision such as will enable a reviewing court to determine whether the discretion has been exercised in a manner that is neither arbitrary nor capricious. See Dunlop v. Bachowski, 421 U.S. 560, 571 (1975). The court's review should be confined to examination of the reasons and determination whether the statement of reasons itself indicates

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3/ Certain sections of the Taylor Grazing Act were further amended by the Federal Land Policy and Management Act of 1976, Pub. L. No. 94-579, 90 Stat. 2743 (October 21, 1976). None of the statutory provisions cited in this decision were affected.

that the decision is so irrational as to be arbitrary and capricious. Dunlop v. Bachowski, supra at 572-73. If the reviewing court concludes there is a rational and defensible basis for the decision, this concludes the inquiry. The reviewing court is not authorized to substitute its judgment for that of the administrative decision maker. Dunlop v. Bachowski, supra at 571, 573.

Substantial reasons were recited by the BLM for the decision below. Included in the reasons were the geographic size of the grazing area involved making tagging necessary to allow verification of the number of cattle grazing, the need to control grazing use carefully to evaluate range condition and trend, and the risk of range deterioration from unauthorized use and the consequent need to prevent unauthorized grazing. The reasons cited are relevant to and consistent with the purpose of the regulation authorizing eartagging. The reasons given establish a rational and substantial basis for requiring eartagging. Accordingly, we cannot conclude that the decision constitutes an abuse of discretion.

Although this Board is not bound by the same restrictions as a federal court in reviewing the exercise by the Secretary's delegate of discretionary authority, we have held before that it is generally not appropriate to revise a decision reached in the exercise of that discretion merely because there is more than one legitimate point of view on the subject. Thus, in Rosita Trujillo, 21 IBLA 289 (1975), a decision rejecting an oil and gas lease offer in the exercise of the Secretary's discretionary authority over leasing on the ground that the risk of harm to the environment required rejection of the lease offer in the public interest was upheld:

> Appellant's contentions are neither erroneous nor unreasonable. They represent only another point of view; a different side of the ongoing controversy over the identification and priority of concerns which comprise the public interest. However, where the responsibility for making such judgments has been exercised by an officer duly delegated with the authority to do so, his action will ordinarily be affirmed in the absence of a showing of compelling reasons for modification or reversal.

Rosita Trujillo, supra at 291. The statement of reasons tendered by appellants has not contradicted the grounds given for the decision below, but rather draws a different conclusion as to whether use of eartags is reasonable under the circumstances.

Since appellants have not alleged facts which would, if proved, entitle them to the relief requested (reversal of the eartagging requirement), the request for an evidentiary hearing is denied. Ruth E. Han, 13 IBLA 296, 304, 80 I.D. 698, 701 (1973); cf. Rube W.

Evans, 26 IBLA 15, 18-19 (1976) (Hearing ordered where evidence offered by appellant contradicted information on which decision was based and raised issue of fact regarding grazing capacity of the land). It appears that no useful purpose would be served by presentation of oral argument in this case and, accordingly, the request is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Newton Frishberg
Chief Administrative Judge